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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan
County Executive

MEMORANDUM

August 12, 2005

TO: Thomas E. Perez, President
Montgomery County Council

016870

FROM: Bruce Romer
Chief Administrative Officer

SUBJECT: Department of Permitting Services (DPS) and Maryland National Capital
Park and Planning Commission (MNCPPC) Biweekly Report As Required by
County Council Resolution 15-1125 Short-Term Measures to Assure
Compliance with Site Plans

The County Council adopted Resolution 15-1125 Short-Term Measures to Assure
Compliance with Site Plans on July 26, 2005. The following action is requested in the
resolution.

"The County Council for Montgomery County, Maryland urges the Montgomery
County Planning Board and the Department of Permitting Services to take these
actions immediately. The Chair of the Planning Board and the Director of the
Department of Permitting Services must provide biweekly reports to the Council
updating the Council on their progress in implementing each step outlined in
paragraph 7."

Attached you will find the first biweekly report which is a joint report from DPS and
MNCPPC as required in the above section of the resolution.

If you have questions or need additional information please contact Robert Hubbard,
Director DPS on 240-777-6363 or Charlie Loehr, Director MNCPPC on 301-495-4511.

Attachments

cc: Robert Hubbard
Charles Loehr



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MONTGOMERY COUNTY
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Department of Permitting Services and
Maryland National Capital Park and Planning Commission
Biweekly Update Report to the County Council on
Resolution: 15-1125 Short-Term Measures to Assure Compliance with Site Plans
Report Date: August 11, 2005

In response to the problems uncovered in Clarksburg, the Montgomery County Planning Board (MNCPPC) and the Department of Permitting Services (DPS) agreed to undertake a number of immediate actions to ensure thorough review and compliance of building permits with site plans while more comprehensive reviews of the planning and enforcement process are pending. In turn, the County Council asked for bi-weekly reports that would detail the progress made with respect to each proposed action. This constitutes the first of these biweekly reports.

Action: No new building permits may be issued in the Clarksburg Town Center development until further review and certification of compliance with appropriate site plans by Park and Planning and the Department of Permitting Services.

Progress Report:

- No new permits have been issued in the Clarksburg Town Center without review and certification of compliance with appropriate plans by Park and Planning and the Department of Permitting Services. DPS and MNCPPC have a process in place in which site plans signed and sealed by a design professional in the state of Maryland, must contain the following information, and must be reviewed and approved by MNCPPC before the permit is issued.

The height of this building, as defined by the Montgomery County Zoning Ordinance, is ____ feet, per the architectural drawings, dated _____, which complies with Site Plan #____ approved by the Montgomery County Planning Board; the height of this building may be impacted by final grading, but the building should not exceed ____ as permitted by the site plan.

The setbacks for this building, as defined by the Montgomery County Zoning Ordinance, are ____ feet front, ____ feet rear, and ____ feet (both sides total of ____ feet min); the setbacks comply with Site Plan # _____ approved by the Montgomery County Planning Board.

- No new building permits subject to this process have been issued in the Clarksburg Town Center.

Action: All requests to amend site plans in Clarksburg must be deferred until reviews of what went wrong in Clarksburg and elsewhere are completed and the Council has an opportunity to take necessary actions.

Progress Report:

- MNCPPC – The Planning Board will be considering all other alleged violations at a hearing on Thursday, September 15th, and will determine a Plan of Compliance on Thursday, September 22nd. The OLO report is also scheduled to be completed in mid-September. MNCPPC has deferred hearing dates to amend Clarksburg site plans until October or beyond.

Action: The Department of Permitting Services, Department of Public Works and Transportation, and the Planning Board must review the roads and other required infrastructure within the Clarksburg Town Center, and provide the Council with a report by August 15, 2005 regarding the status of the Implementation of the provisions of the Clarksburg Town Center site plans pertaining to road infrastructure, including recommendations for ensuring that the necessary road infrastructure is in place in a timely fashion.

Progress Report:

- MNCPPC has developed a map which clearly shows which roads the developer is responsible for and whether the provision of these roads is linked to a specific building permit or other trigger. Since some roads have no such trigger, staff has met with the developer, who has agreed in principle to proffer certain additional actions that will ensure that all roads that are part of the overall Clarksburg Town Center Project are built in a timely manner. MNCPPC will provide a more complete accounting of the roads and other required infrastructure in its August 15th report to the Council.

The following DPS actions have been undertaken during the week of August 1st through August 5th in reference to the review of roads and other required infrastructure within the Clarksburg Town Center.

- Evaluated the supporting roadway network within the Clarksburg Town Center area to ensure adequate roadway systems are in place for site access and neighborhood circulation around the Clarksburg communities.
- Biweekly communication with staff at MNCPPC and DPWT to ensure the site plan conditions, as noted in the approved site plan related to road construction, are implemented in an orderly fashion as outlined in the site plan approval conditions.

- Ensured any future road closures in the Clarksburg Town Center are coordinated between various agencies such as Police, Fire and Rescue, and the State Highway Administration and that the community is informed and notified in advance of any closures.
- The following are recommendations DPS is considering as part of the discussion of the overall coordination effort.
 1. Review construction schedule with development contractor at preconstruction meeting to ensure the maximum utilization of the permit duration.
 2. Conduct periodic review meetings at six month intervals to revisit construction schedules and assess construction progress.
 3. All new road construction permit applications will be handled promptly to ensure timely commencement of any needed roadway improvements.
 4. DPS plan review staff will review any future Traffic Control Plan (TCP) for future road closures. Any needed road closures will be minimized.
- Preparation of a Geographic Information System (GIS) map showing the status of roadways under design and construction to assist in the review of the on-going road projects and keeping the community informed.
- Compiling and tracking of the various development projects, including Clarksburg Town Center, showing the triggering and staging mechanism for any needed road improvements.

Action: A county wide freeze on issuance of Building Permits in site plan zones (residential and commercial) continues until height limit and setback requirements can be verified by the Department of Permitting Services.

Progress Report:

- No new permits have been issued in site plan zones (residential and commercial) without review and certification of compliance with appropriate plans by Park and Planning and the Department of Permitting Services. DPS and MNCPPC have a process in place in which site plans signed and sealed by a design professional in the state of Maryland, must contain the following information, and must be reviewed and approved by MNCPPC before the permit is issued.

The height of this building, as defined by the Montgomery County Zoning Ordinance, is ____ feet, per the architectural drawings, dated _____, which complies with Site Plan #____ approved by the Montgomery County Planning Board; the height of this building may be impacted by final grading, but the building should not exceed ____ as permitted by the site plan.

The setbacks for this building, as defined by the Montgomery County Zoning Ordinance, are ____ feet front, ____ feet rear, and ____ feet (both sides total of ____ feet min); the setbacks comply with Site Plan # _____ approved by the Montgomery County Planning Board.

- Three new commercial applications have been submitted by DPS to MNCPPC and are being reviewed.

Action: Almost 200 building permit applications (residential and commercial) are currently pending with county authorities. No permits may be issued until each applicant resubmits site plans that disclose height and setback compliance. Department of Permitting Services and the Planning Board must verify the setback and height restrictions spelled out in the approved site plan.

Progress Report:

- Letters were sent to applicants of the 200 building permit applications requesting them to resubmit their building permit site plans with information stating that it is in compliance with the MNCPPC site plan requirements.
- Nineteen building permit site plans have been resubmitted with additional information related to height and setbacks and sent to MNCPPC for review; six of these were found to be in compliance with MNCPPC site plans and the remainder are still under review.

Action: Any building permit application that uses the term “story” to describe the height of a building, instead of indicating proposed height by actual measurement of the building, must be rejected.

Progress Report:

- No building permit applications have been received using the term “story” to describe the height of a building.

Action: The Planning Board and Department of Permitting Services must conduct an immediate audit of site plans approved throughout Montgomery County since January 1, 2003 to ensure that work being done is in accordance with the specifications of the approved plans. Planning Board and Department of Permitting Services should immediately suspend development in any site plan where violations are uncovered.

Progress Report:

- DPS and MNCPPC have determined that 118 site plans have been approved since January 1, 2003. An immediate audit has begun of the following:

820040030 Cider Barrel
81994012A Cloppers Mill
820030210 Middlebrook Industrial Park
820030000 Parkside
820030200 Tony's Car Wash
820030180 Wisteria Business Center
82002022A Highlands @ Clarksburg

DPS and MNCPPC hope to complete an audit of most of the projects in which construction has started by the middle of September.

Action: Park and Planning mid-level personnel must no longer approve “administrative” or so-called minor amendments to site plans. The Director of Park and Planning must personally approve every amendment to a site plan that is not considered by the Planning Board and any site plan amendment review, major or minor, must include public notice.

Progress Report:

- MNCPPC – Staff has been instructed to prepare a memo outlining the administrative changes being requested and making a finding that the changes do not alter, in any way, the intent of the Board's approval. This document is then reviewed by the appropriate supervisor and the Chief of Development Review before going to the Director of Park and Planning for final action.
- Public notice has always been required for major site plan amendments. A new process has now been implemented to notice all "administrative" or minor amendments to site plans. This process is outlined below:

To seek a minor amendment to a previously approved site plan an applicant needs to submit the following items:

1. An application form.
2. A letter explaining the proposed change.
3. Application fee: \$300 - \$1,500.
4. Three sets of plans.

To process this amendment as a staff-level approval without a public hearing, an applicant needs to do the following:

1. Send a notice to all parties of record. The notice should:
 - a. Include a statement of the proposed change.
 - b. Have a copy of the plan attached.
 - c. Explain that anyone who has comments or concerns about the change should contact the M-NCPPC staff reviewer at 301-495-_____ by _____ (30 days from the mailing date of the notice).
2. If no comments are received and staff has no issues with the proposed change, the administrative amendment will be approved by the Director of the Planning Department. If comments are received, the Director will determine whether such comments are substantive enough to require that the amendment be submitted to the Planning Board.
3. A new signature set reflecting the amendment will need to be submitted *before final approval is granted.*

Action: Subject to Council approval the Department of Permitting Services and the Planning Board must submit to the county Council by July 30, 2005 a staffing plan to increase the number of personnel dedicated to site plan and other enforcement duties. The resources for additional personnel must come from increased fees on developers and builders, not from taxpayer funded sources.

Progress Report:

- DPS and MNCPPC submitted staffing plans to the County Council

Action: Existing personnel in the Department of Permitting Services and the Planning Board must be immediately re-deployed to perform site plan inspections. The County Council will be provided with a plan for training new and redeployed employees.

Progress Report:

- DPS has redeployed one inspector full time to perform site plan inspections.
- MNCPPC has taken steps to redeploy three individuals from County-Wide Planning to help with inspections. In addition, two individuals from Community Based Planning will be redeployed to assist with the review of Signature Set Documents and one site plan reviewer will be temporarily reassigned from Prince Georges. Finally, a member of the Parks staff will also assist in site plan review.
- A plan to train new and redeployed employees is being developed by DPS and MNCPPC.

Action: The Department of Permitting Services and the Planning Board must immediately begin the process of recruiting additional, qualified personnel to perform enforcement functions for the two agencies.

Progress Report:

- DPS has created and advertised positions outlined in the staffing plan.
- MNCPPC has advertised six of the positions outlined in the staffing plan and is preparing more complete job descriptions for the remaining positions. In addition, action has begun to hire an outside IT consultant and legal counsel as needed to meet current needs.

Action: The builders and developers involved in the proceeding pending before the Planning Board pertaining to the Clarksburg Town Center development have agreed to the community's request that the Planning Board investigate and adjudicate *all* allegations of violations prior to adjudication of the sanctions. The Council endorses this approach.

Progress Report:

- MNCPPC – The Planning Board delayed the Plan of Compliance hearing with respect to height and setback violations that was originally scheduled for July 28th until the Planning Board has had a chance to review all of the alleged violations. That violation hearing is currently scheduled for September 15th.